



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0002
MILENKO & MILIJANA BESLIC
118 PLEASANT STREET, BROOKLINE, MA

Petitioners, Milenko and Milijana Beslic, applied to the Building Commissioner for permission to convert an existing three family home into a four family home and to construct a garage. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed March 24, 2016 at 7:15 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, to their attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on March 10, 2016 & March 17, 2016 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

Notice of Hearing

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

118 PLEASANT ST – CONVERT FROM A THREE-FAMILY TO A FOUR-FAMILY AND RECONSTRUCT A REAR GARAGE, in an M-1.5, Apartment House, zoning district, on

March 24, 2016, at 7:15 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: BESLIC MILENKO & MILIJANA) Precinct 2

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

- 1. Section 5.01: Table of Dimensional Requirement, Footnote 1 and 2**
- 2. Section 5.05: Conversion**
- 3. Section 5.09.2.d: Design Review**
- 4. Section 5.22.3.b.2: Exceptions to Floor Area Ratio (FAR) for Residential Units**
- 5. Section 5.43: Exceptions to Yard and Setback Regulations**
- 6. Section 5.50: Front Yard Requirements**
- 7. Section 5.53: Accessory Structures in the Front Yard**
- 8. Section 5.90: Minimum Landscaped Open Space**
- 9. Section 5.91: Minimum Usable Open Space**
- 10. Section 6.02 paragraph 1: Table of Off-Street Parking Requirements**
- 11. Section 6.04.5.b: Design of All Off-Street Parking Facilities**
- 12. Section 6.04.12: Design of All Off-Street Parking Facilities**
- 13. Section 8.02.2: Alteration or Extension**
- 14. Any additional relief the board may find necessary**

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in Town programs and services may make their needs known to **Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2326; TDD (617)-730-2327; or email at lgellineau@brooklinema.gov.***

Jesse Geller, Chair

Christopher Hussey

Jonathan Book

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Deputy Building Commissioner Michael Yanovitch and Zoning Coordinator Jay Rosa. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance were the Petitioners, Milenko and Milijana

Beslic, along with project architect, Tanya Carriere, Khalsa Design Inc., 17 Ivaloo Street, Suite 400, Somerville, MA 02143. Chairman Geller called the hearing to order at 7:15 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen presented to the Board a background of the Petitioners and the proposal stating: 118 Pleasant is located in the M-1.5 District. He stated that the building is one of seven attached row houses, five of which have detached two car garages in the rear. Mr. Allen further stated that Petitioners received approval of the same proposal before the Board in 2007, however, they were unable to initiate renovations and the special permits lapsed.

Tanya Carriere, the Petitioners' architect reviewed the proposed plans with the Board. Ms. Carriere described the conversion of the basement into a residential dwelling unit and the reconstruction of a multilevel parking structure to accommodate six cars in total. She described the basement unit as having an open living and dining room area with two bedrooms in the rear. The unit would contain new windows with window wells for emergency escape.

The proposed garage has two parking spaces inside the garage and two spaces on the roof of the garage. Columns will not be added within the garage to allow maneuverability. There are also two existing parking spaces. She stated that like the garage at 116 Pleasant Street, the proposed garage would allow Petitioners to park on top of the roof. Ms. Carriere indicated that the Petitioners are leaving the garage wall along the public way where it is rather than relocating it closer to the public way 2 ft. 9' as originally proposed.

Board Member Christopher Hussey questioned the dimensions of the wall. Mr. Allen stated that the neighbors were strongly opposed to relocation of the outer wall closer to the public way. Therefore, the middle column was removed to provide sufficient swing space for

vehicles entering and exiting the garage. The Petitioners kept the wall as located and moved the trash barrels to the top.

Mr. Geller questioned the safety of access to and from the upper level of the proposed garage. Attorney Allen stated that Petitioners added a slip resistant walkway and handrail. Mr. Allen also stated that the change in the garage would increase the landscape open space by 45 square feet. He concluded that planters would be added to provide screening for abutters.

Board Member Hussey questioned whether the issue before the Board was one of a special permit or variance. Mr. Yanovitch stated that under **Section 5.05** of the Zoning By-Law, pre-existing nonconforming situations can be interpreted as either a variance of special permit depending on the facts and circumstances of a given case and confirmed the requested relief can be granted by special permit.

Mr. Allen then reviewed relief from application of the provisions of **Section 5.05** of the Zoning By-Law which may be waived by special permit pursuant to **Section 5.43** of the Zoning By-Law. Mr. Allen stated that under this By-Law Section, the Board has authority to waive by special permit any dimensional requirement except the minimum lot size. Mr. Allen stated that the Board retains the authority to waive the requirements for open space under **Section 5.43** of the Zoning By-Law. Mr. Allen further stated that the existing premises are pre-existing nonconforming and that the alterations would add 1,252 square feet, which would necessitate 190 square feet of usable open space under the Zoning By-Law. The proposed project creates 45 square feet of landscaped open space as determined under **Section 5.05** of the Zoning By-Law.

Attorney Allen then discussed the availability of relief from application of the usable open space requirements of **Sections 5.90** and **5.91** of the Zoning By-Law under MGL c. 40A,

Section 10. Mr. Allen argued that the Petitioners meet the standards for a variance under MGL c. 40A, Section 10 and should therefore be granted a variance based on the following:

(i) the Petitioner is unable to fulfill the required 1,086 square feet of usable open space, but the proposal would create 45 square feet of usable open space in the M-1.5 District where the limitations of the lot due to changes in the grade make it impossible to otherwise satisfy the requirement (and noting that 118 Pleasant Street is unique given its significant topographical change in the rear yard); (ii) the rear area is entirely paved and there is little or no usable open space within the M-1.5 District, consequently, making it impossible to find the minimum 15x15 of area required for usable open space under the Zoning By-Law; and (iii) the combination of this natural topography, location of the accessory garage and the pre-existing nonconforming open space places undue hardship on this proposal.

Mr. Allen also noted that prior relief was granted for a similar garage proposal at 116 Pleasant Street.

Attorney Allen then discussed relief under **Section 8.02.2** of the Zoning By-Laws, where a special permit is required under **Section 9.05** of the Zoning By-Laws to alter and/or extend a non-conforming structure. Attorney Allen stated the following: (1) the specific site is an appropriate location where five of the row houses have garages in the rear yard including the direct abutter at 116 Pleasant Street; (2) there will be no adverse effect on the neighborhood; (3) no nuisance or serious hazard to vehicles or pedestrians exists where the Petitioners have created a safer experience for pedestrians by adding handrails, nonslip surface and removed the trash barrels to the roof top, and letters of support from neighbors at 116 Pleasant Street and 120 Pleasant Street have been received; (4) adequate and appropriate facilities will be provided for

the proper operation; and (5) development will not have a significant adverse effect on the supply on housing available for low and moderate income people.

Attorney Allen concluded stating that the Petitioners propose a more efficient use of space and a safer experience for both pedestrians and vehicles. For the reasons stated, Attorney Allen argued that either a variance or a special permit would be appropriate in this instance.

Zoning Board of Appeals Chairman Jesse Geller asked if there was anyone present who wished to speak in favor of or in opposition to this application.

Steve Pell, an abutting neighbor commented on the narrowness of access road and that maneuvering his vehicle past a parked, regular sized vehicle would be difficult, particularly in the winter months when snow and ice exist. Mr. Pell stated that a compact vehicle currently parks at the southernmost portion of the parking area. He proposed that this parking space remain restricted for use as a compact space in order to maintain safe passageway along the alleyway.

Board Member Poverman questioned whether any spaces indicated on the plans would be limited to compact vehicles. Attorney Allen stated that Petitioners reduced the initial parking space request from seven (7) parking spaces. Board Member Hussey questioned the effectiveness of reducing any of the parking spaces to compact.

Zoning Board of Appeals Chairman Jesse Geller called upon Jay Rosa, Planner for the Town of Brookline, to deliver the findings of the Planning Board:

FINDINGS:

Section 5.01 – Table of Dimensional Requirements, Footnote 1 and 2: Footnote 1 requires garage or covered vehicular passageway entrances to be at least 20 feet from the street lot line. In this case, the covered garage area actually faces the rear of the building, not the access way.

Footnote 2 allows for buildings in M districts to be built to the side lot line if another principal building is already along the side lot line or by special permit if the Board of Appeals finds that

reasonable development of the lot necessitates building to the side lot line.

Section 5.05 – Conversion: When converting a dwelling to create additional dwelling units in an M District, the Board of Appeals may by special permit waive any dimensional requirements except minimum lot size, provided no previously existing nonconformity to such requirements is increased and all other requirements of the By-law for conversions are met. *Special permit required.*

Section 5.09.2.d – Design Review: Any exterior alteration to a dwelling with four or more units requires a special permit subject to the design review standards listed under *Section 5.09.4(a-l)*. All the conditions have been met, and the most relevant sections of the design review standards are described below:

a. Preservation of Trees and Landscape – The only landscaped space on site now is in the front yard, which is not changing with this proposal. The plans indicate new planters on the roof of the new garage to help screen the additional parking spaces.

b. Relation of Buildings to Environment – The proposal does not affect the natural features of the neighborhood, nor is expected to create significant shadows on abutting properties.

c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The exterior changes to the principal building are minimal and will not be visible from Pleasant Street. Although the proposed garage would be unique for this neighborhood due to its two-story aspect, there are several other garages and parking areas situated similarly in relation to the principal buildings in the immediate area.

d. Open Space – There will be no usable open space on site. There is no proposed increase in landscaped open space on site.

e. Circulation – Proposed vehicular circulation is tight and would require maneuvering vehicles in order to access all spaces. The project does make use of the lot's existing vehicular access, and the exterior handrail on the garage and slip-resistant finish on the access drive improves pedestrian safety in the parking area.

f. Stormwater Drainage – Previous plans indicated a new trench drain and drywell to address drainage in the parking area.

Section 5.22.3.b.2 – Exceptions to Floor Area Ratio (FAR) for Residential Units

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	1.5 100%	1.3 87%	1.56 104%	Special Permit*
Floor Area (s.f.)	6,940.5	5,994	7,246	

*Under *Section 5.22.3.b.2*, the Board of Appeals may grant a special permit for up to 120% of allowed gross floor area by addition or interior conversion in M districts.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.50 – Front Yard Requirements

Section 5.53 – Accessory Structures in the Front Yard

Section 5.90 – Minimum Landscaped Open Space

Section 5.91 – Minimum Usable Open Space

Dimensional Requirements	Required	Existing	Proposed	Relief
Front Yard Setback (Garage)	19.15' (15' + H/10)	0'	0'	Special Permit**
Side Yard Setback (Garage)	6'	2.2'	0'	Special Permit**
Landscaped Open Space	724 s.f. (10% g.f.a.)	443 s.f.	443 s.f.	Variance
Usable Open Space	1,086 s.f. (15% g.f.a.)	0 s.f.	0 s.f.	Variance

** Under *Section 5.43*, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.

Section 6.02, paragraph 1 – Table of Off-Street Parking Requirements

Section 6.04.5.b – Design of All Off-Street Parking Facilities

Section 6.04.12 – Design of All Off-Street Parking Facilities

Parking Requirements	Required	Existing	Proposed	Relief
Parking Spaces	9	4	7	Special Permit†

† Under *Section 6.01.2.a*, the Board of Appeals may waive by special permit up to half of the required parking spaces when converting a structure in an M district for additional units.

**Due to the project proposing seven parking spaces (as opposed to six in the previously-approved proposal), additional zoning relief is required, including maneuvering aisle width, obstructed parking, entrance/exit drive width, and parking within 10 feet of a building with windows of habitable rooms at the basement or first-story level. **

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming structure or use.

Mr. Rosa stated that the Planning Board is supportive of the proposal to convert the basement of the subject property into a fourth dwelling unit. The changes to the building are minimal and are not visible from the street. He stated that the Planning Board found the proposed parking garage to be a creative way to provide additional parking and trash barrel storage on the roof, and felt that the rooftop screening should improve its overall appearance. However, the

Planning Board also felt that seven parking spaces on site is excessive, and the proposed parking plan would likely result in conflicts between vehicles. The Planning Board suggested that the proposal reduce the number of parking spaces to six, which would reduce the width of the garage and allow for greater ease in circulation on site and substantially reduce the amount of zoning relief needed.

Therefore, the Planning Board recommends approval of the plans titled “118 Pleasant Street” prepared by CYMA2 Inc., dated 12/31/15, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit a final site plan indicating two surface parking spaces as well as all drainage improvements.
4. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Yanovitch reported on behalf of the Building Department. He indicated that the Building Department does not have any objection to the proposal and confirmed Attorney Allen's interpretation of **Section 5.05** of the Zoning By-Law. Mr. Yanovitch stated that the issues with the structure are due to its pre-existing status. It takes up a significant portion of the right of way and extends into the 18 foot Passageway, which conflicts with the traversing of the passageways.

Mr. Yanovitch commented that the Building Department relied upon and cited **Section 5.05** of the Zoning By-Law which includes open space as a waivable requirement. He stated that this interpretation is consistent with prior interpretation of the By-Law and is similar to the

interpretation of **Section 5.07** of the Zoning By-Law with respect to dimensional requirements and usable open space for businesses in residential districts. If the Board finds that the proposal meets the standards for special permit or variance, the Building Department will work with the Petitioner to ensure compliance.

During deliberations, Mr. Hussey inquired about the Planning Department's view on restricting any of the proposed parking spaces to a compact size. Mr. Rosa stated that Planning Department viewed the plans prior to the revisions. Attorney Allen stated that the Petitioners are agreeable to making the parking space closest to 116 Pleasant Street, a compact sized space.

Board Member Hussey stated his opinion that the requirements for special permits have been met. Board Member Poverman stated that she is supportive of the grant of a variance or a special permit given the unique lot in the M-1.5 District. Mr. Geller echoed support for both variance and special permit, but stated his preference for granting relief by special permit. The Board then determined, by unanimous vote that the requirements for a special permit from application of **Sections 5.01, 5.05, Section 5.09.2.d, 5.50, 5.53, 5.90, 5.9, Section 6.02, paragraph 1, 6.04.5.b, and 6.04.1** of the Zoning By-Law pursuant to **Sections 5.43, 8.02.2** and **9.05** of the Zoning By-Law were met. The Board made the following specific findings pursuant to said **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

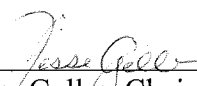
- e. Development will not have any effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following amended conditions:

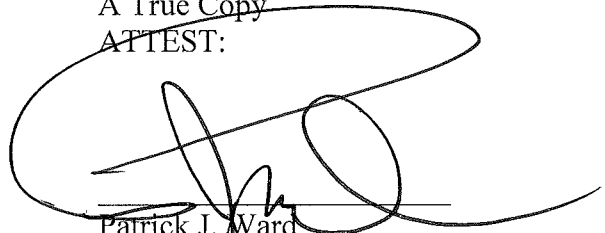
1. Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations showing a two over two car garage subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, including landscape buffering of gas meters subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit a final site plan indicating two surface parking spaces, a total of six (6) parking spaces, including a space restricted to a compact car located next to 116 Pleasant Street, as well as all drainage improvements, subject to the review and approval by the Engineering Department.
4. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: 5/10/16


Jesse Geller, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

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2016 MAY 10 P 1:45